

MEMO ENDORSED



March 22, 2022

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Via ECF

Hon. Kenneth M. Karas
United States District Judge
United States District Court for the
Southern District of New York
300 Quarropas Street, Chambers 533
White Plains, NY 10601-4150

The Court denies Defendants' Letter Motion to produce the recording as moot. The Clerk of the Court is respectfully directed to terminate the pending Motion to that effect, (Dkt. No. 50). At this time, however, the Court takes no position on Defendants' last paragraph regarding the probable cause or qualified immunity analysis; the Court will address it as well as the remaining issues and arguments in its forthcoming opinion on Defendants' Motion.

Date: 3/24/2022

SO ORDERED

KENNETH M. KARAS U.S.D.J.

Re: *Ariel Dan Barkai v. George Mendez, et al.*, No. 21-CV-04050-KMK
File No: 12129.00319

Dear Judge Karas:

We represent the defendants George Mendez, Alice Laschet, Lt. Cummings, Jeff Wanamaker, Ray McCullagh, and George Hoehmann (collectively, the "Defendants") in the above-referenced matter. We write in response to this Court's March 21, 2022 directive that defendants confirm whether they received a copy of the recording Plaintiff submitted in opposition to the motion to dismiss.

Defense counsel confirms that we received an email from Mr. Barkai on February 15, 2022, attaching an audio recording entitled "Clarkstown Cop 'you have to investigate on both ends'" which is approximately 4 minutes in length, and appears to record the first part of the April 28, 2020 traffic stop by Officer Mendez. We are able to access and listen to that recording and agree that the prior request to compel production of the recording is moot.

Defendants addressed the recording in their reply memorandum filed on February 24, 2022, explaining why the recording does not change the probable cause or qualified immunity analysis. (*See e.g.*, DE #53 at pp.2-4). Additionally, as stated in the Defendants' Reply memorandum, this recording does not appear to have captured the entirety of the traffic stop and Defendants reserve all objections regarding the admissibility or accuracy of the recording.

Respectfully submitted,

Wilson Elser Moskowitz Edelman & Dicker LLP

/s/ Eliza M. Scheibel

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